No. 03-051

Supreme Court, U.S.
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In The
Supreme Court of the United States

SEAN SILVEIRA, JACK SAFFORD, PATRICK OVERSTREET, DAVID K. MEHL, SGT. STEVEN FOCHT, SGT. DAVID BLALOCK, MARCUS DAVIS, VANCE BOYES, and KEN DEWALD,

Petitioners,

v.

BILL LOCKYER, Attorney General, and GRAY DAVIS, Governor, State of California,

Respondents.

On Petition For Writ Of Certiorari To The California Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Court of Appeals erred when it denied Petitioners' standing to challenge a California state statute in federal court based upon the unincorporated Second Amendment to the United States Constitution?

2. Whether the Second and Fourteenth Amendments operate to deprive the states of the ability to take reasonable measures pursuant to the state legislatures' police powers to protect their citizens from the ravages of rampant gun crimes?

   A. Whether *Presser v. Illinois,* 116 U.S. 252 (1886), a seminal case upon which states rights to control firearms has been predicated for over one hundred years should be overruled?

   B. Whether the Second Amendment should be held to be part of the Fourteenth Amendment privileges and immunities of citizens and the precedent which has existed for more than one hundred and twenty years as established by *United States v. Cruikshank*, 92 U.S. 542 (1876) and the *Slaughterhouse Cases*, 83 U.S. 36 (1873), overruled?

3. Whether a fourth precedential case from this Honorable Court, *United States v. Miller*, 307 U.S. 174 (1939), which upheld the conviction of an individual who violated a federal gun control law, should be overruled?

QUESTIONS PRESENTED – Continued

4. Whether a heightened standard of review should be applied to a State statute that provides for reasonable control of firearms should be imposed if the Court overrules at least four of its previous cases and more than one hundred and twenty years of precedent?

5. Whether a trial on the merits, and a record of expert and factual testimony should be developed concerning the Second Amendment and the specific firearms and factual issues involved in this case?

6. Whether this Court should order an interim assessment of litigation expenses and counsel fees for Petitioners prior to the establishment of the trial and compilation of the expert and factual testimony proposed in question V?

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OPINION OR JUDGMENT BELOW

The opinion of the Court of Appeals (Pet. App., pp. 40A-109A) is reported at 312 F.3d 1052. The statement (Pet. App., pp. 1A-40A) issued by the panel upon denial of rehearing en banc is reported at 328 F.3d 567.

STATEMENT OF JURISDICTION

The amended judgment of the Court of Appeals was entered on January 27, 2003. A petition for rehearing en banc was denied on May 6, 2003. The petition for a writ of certiorari was filed on July 3, 2003. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

INTRODUCTION

Petitioners are a group of self-described "model" citizens from the State of California who seek an advisory opinion concerning their abstract right under the Second Amendment to possess assault weapons free from state regulation. Petition, p. 2 n. 3. Petitioners' complaint below (included with this Brief in Opposition as an Appendix) presents a sweeping and vague "shotgun" approach to attacking a variety of California's gun control statutes. Among other things, petitioners attack the assault weapons laws and concealed-carry laws for handguns; complain about laws regulating "'Saturday Night Special' ('Junk Guns')" handguns, and "cop-killer" bullet laws; and raise nebulous due process "takings" claims.

The Ninth Circuit Court of Appeals denied petitioners their desired advisory opinion for lack of standing, on the

ground that the Second Amendment does not create an individual right to possess firearms for personal use. The opinion's elaborate analysis was, therefore, patently unnecessary; the court's holding was a foregone conclusion in view of its earlier decision in *Hickman v. Block*, 81 F.3d 101-102 (9th Cir. 1996), *cert. denied*, 519 U.S. 912 (1996). See Pet. App., p. 59A n. 15. Although the panel's analysis was different from others', nevertheless the result – refusing to entertain a challenge to state regulation of assault weapons based on an asserted individual right to possess them – was consistent with this Court's own precedent and with the decisions of all other circuit courts that have considered the question.

STATEMENT OF THE CASE

At issue in this case is a State's regulation of the possession and sale of assault weapons, rapid-fire rifles and pistols that have been used on California's school grounds to kill children. Pet. App., p. 42A. This case is not about militias, nor even about collective defense. Petitioners have never contended for the need to possess their assault weapons in the interest of collective defense. This case is about petitioners' asserted right to possess these extremely lethal weapons for personal use – free from state regulation.

Petitioners challenge the 1999 amendments to California's Roberti-Roos Assault Weapons Control Act. The original assault weapons control laws were passed fourteen years ago, in 1989. Cal. Penal Code sec. 12276 et seq. Enactment of the 1989 law followed years of extensive public discussion and legislative debate regarding the

propriety of gun control laws in California. In section 12275.5 of the Roberti-Roos Assault Weapons Control Act, California Penal Code section 12275.5, the Legislature memorialized its reasons for regulating assault weapons:

> The Legislature hereby finds and declares that the proliferation and use of assault weapons poses a threat to the health, safety and security of all citizens of this state. The Legislature has restricted the assault weapons specified in Section 12276 based upon finding that each firearm has such a high rate of fire and capacity for firepower that its function as a legitimate sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings. It is the intent of the Legislature in enacting this chapter to place restrictions on the use of assault weapons and to establish a registration and permit procedure for their lawful sale and possession. It is not, however, the intent of the Legislature by this chapter to place restrictions on the use of those weapons which are primarily designed and intended for hunting, target practice, or other legitimate sports or recreational activities.

The Roberti-Roos Assault Weapons Control Act of 1989 withstood federal constitutional scrutiny, including an attack made pursuant to the Second Amendment, in *Fresno Rifle and Pistol Club v. Van de Kamp*, 965 F.2d 723 (9th Cir. 1992). In that case, the Ninth Circuit also found the plaintiffs did not have standing to challenge pursuant to the Second Amendment.

In 1999 the California Legislature made additions to the 1989 assault weapons laws, modeled on federal law, 18 U.S.C. §§ 921(a)(30) and 922(v)(1). The amendments were

designed to expand the definition of assault weapons and to place restrictions on the manufacture, sale, possession, and use of the firearms that have the specified characteristics. The amendments also banned the sale, but not the possession, of large-capacity magazines, which were defined as "any ammunition feeding device" capable of holding more than ten rounds of ammunition. See Cal. Pen. Code § 12276.1(d)(1), (2).

The 1999 amendments became effective on January 1, 2000. Members of the public who, on or before December 31, 1999, lawfully possessed assault weapons as defined in California Penal Code section 12276.1, had until December 31, 2000, to register their assault weapons with the California Department of Justice, or remove the characteristics which make the firearm an assault weapon. Pursuant to California Penal Code section 12286, individuals may obtain, upon a showing of good cause, a permit from the California Department of Justice to purchase, sell, or possess an assault weapon.

Petitioners are residents of California, apparently not otherwise prohibited by law from possessing firearms, who allegedly own or wish to acquire assault weapons. They include an engineer, an insurance agent, a law enforcement officer, members of the California National Guard and veterans of the United States Armed Forces. Petitioners moved the district court to invalidate the 1999 amendments. The district court dismissed the petitioners' action and the Ninth Circuit Court of Appeals affirmed.

REASONS FOR DENYING THE PETITION

I. THE OPINION OF THE COURT OF APPEALS IN THE PRESENT CASE DOES NOT CONFLICT WITH ANY PRECEDENT OF THIS COURT.

For more than 120 years, this Court has repeatedly held that the Second Amendment does not apply to state laws. See *United States v. Cruikshank*, 92 U.S. 542, 553 (1875) ("The second amendment declares that it shall not be infringed; but this, as has been seen, means no more than that it shall not be infringed by Congress."); *Presser v. Illinois*, 116 U.S. 252, 264-265 (1886) ("But a conclusive answer to the contention that this [Second] amendment prohibits the [state] legislation in question lies in the fact that the amendment is a limitation only upon the power of Congress and the National government and not upon the States."). Indeed, since the Second Amendment was designed to ensure the States' ability to thwart invasion and protect against federal encroachment, it would be especially ironic to include it among the provisions selectively incorporated against state power.

More than 60 years ago, the Court in *United States v. Miller*, 307 U.S. 174 (1939), again addressed the scope of the Second Amendment in a challenge to the National Firearms Act of 1934. The Court reasoned that, in order to sustain the challenge, the firearm at issue must have "some reasonable relationship to the preservation or efficiency of a well regulated militia," and without such evidence there existed no Second Amendment "right to keep and bear" a sawed-off, or short-barrel shotgun. *Miller*, 307 U.S. at 178. The Court determined the purpose of the Second Amendment was "to assure the continuation and render possible the effectiveness" of militia forces and

emphasized the Second Amendment must "be interpreted and applied" in a manner that focuses on the militia. *Ibid.*

The Court has never deviated from these precedents recognizing the essential connection between the Second Amendment and collective defense by state militias. For example, in *Lewis v. United States*, 445 U.S. 55, 65, n. 8 (1980), the Court cited *Miller* favorably in determining that legislative firearm restrictions "are neither based upon constitutionally suspect criteria, nor do they trench upon any constitutionally protected liberties." See also, e.g., *Adams v. Williams*, 407 U.S. 143, 150-151 (1972) (Douglas, J. dissenting) (quoting *Miller* for the proposition that the Second Amendment "must 'be interpreted and applied' with the view of maintaining a militia"). Moreover, the Court has reviewed firearm regulations without addressing the Second Amendment at all. See e.g., *United States v. Bean*, 537 U.S. 71 (2002); *United States v. Lopez*, 514 U.S. 549 (1995). Furthermore, this Court has denied review in numerous cases raising individual-right challenges under the Second Amendment. See Robert J. Spitzer, *The Second Amendment "Right to Bear Arms" and United States v. Emerson*, 77 St. John's L. Rev. 1, 14 (2003).

II. THERE IS NO CIRCUIT CONFLICT WITH RESPECT TO THE QUESTION WHETHER A STATE-LAW REGULATION OF ASSAULT WEAPONS IMPLICATES AN INDIVIDUAL RIGHT UNDER THE SECOND AMENDMENT.

The opinion of the Ninth Circuit panel below was a gratuitous elaboration of theory to support a holding that was, in any event, dictated by the same court's precedent

some seven years earlier. See Pet. App., pp. 108A-109A (Magill, J., concurring); *Hickman v. Block*, 81 F.3d 101-102 (9th Cir. 1996), *cert. denied* 519 U.S. 912 (1996). Indeed Congress, the Courts of Appeals, and state legislatures have all heavily relied upon the fact that this Court has never upheld an individual's Second Amendment challenge on any grounds. Federal courts interpreting the scope and meaning of the Second Amendment to the United States Constitution have, with the sole exception of the Fifth Circuit in dicta (see discussion infra p. 9), have consistently concluded that the Second Amendment does not create an individual, personal right to keep and bear arms, but rather the right of the States to maintain a "well regulated militia." *United States v. Miller*, 307 U.S. at 178 (1939); *Cases v. United States*, 131 F.2d 916, 923 (1st Cir. 1942) (Second Amendment not violated since there was no evidence the defendant "was or ever had been a member of any military organization or that his use of the weapon . . . was in preparation for a military career" and he was "on a frolic of his own and without any thought or intention of contributing to the efficiency of the well regulated militia."); *United States v. Rybar*, 103 F.3d 273, 286 (3rd Cir. 1996) (Second Amendment not implicated as defendant's possession of a machine gun was not connected with militia activity); *Love v. Pepersack*, 47 F.3d 120, 122-124 (4th Cir. 1995) ("[T]he Second Amendment does not apply to the states," and "the Second Amendment preserves a collective, rather than individual, right."); *United States v. Warin*, 530 F.2d 103, 106 (6th Cir. 1976) ("'since the Second Amendment right "to keep and bear arms" applies only to the right of the State to maintain a militia and not to the individual's right to bear arms, there can be no serious claim to any express constitutional right of an individual to possess a firearm'"), quoting *Stevens v.*

United States, 440 F.2d 144, 149 (6th Cir. 1971); *Gillespie v. City of Indianapolis*, 185 F.3d 693, 710 (7th Cir. 1999) (Second Amendment right "inures not to the individual but to the people collectively, its reach extending so far as is necessary to protect their common interest in protection by a militia"); *United States v. Hale*, 978 F.2d 1016, 1019 (8th Cir. 1992) ("[C]onsidering this history, we cannot conclude that the Second Amendment protects the individual possession of military weapons."); *Hickman v. Block*, 81 F.3d at 101-102 (9th Cir. 1996), *cert. denied* 519 U.S. 912 (1996) ("We follow our sister circuits in holding that the Second Amendment is a right held by the states, and does not protect the possession of a weapon by a private citizen. We conclude that Hickman can show no legal injury, and therefore lacks standing."); *Fresno Rifle Club v. Van de Kamp*, 965 F.2d 723, at 729-731 (9th Cir. 1992); *United States v. Oakes*, 564 F.2d 384 (10th Cir. 1977) (rejecting individual rights view and rejecting defendant's claim that his possession of a machine gun was protected by the Second Amendment); *United States v. Wright*, 117 F.3d 1265 (11th Cir. 1997) (Second Amendment provided no individual protection for defendant who unlawfully possessed machine guns); see also cases listed in "Federal Constitutional Right to Bear Arms," 37 A.L.R.Fed. 696 and Supp. (1978); *Galvan v. Superior Court of the City and County of San Francisco*, 70 Cal.2d 851, 866 (1969) ("The claim that legislation regulating weapons violates the Second Amendment has been rejected by every court which has ruled on the question.").

Nor is there any genuine conflict between the Ninth Circuit's decision below and the decision of the Fifth Circuit in *United States v. Emerson*, 270 F.3d 203 (5th Cir. 2001), *cert denied*, 536 U.S. 907 (2002). In *Emerson*, the

court upheld the constitutionality of a challenged federal gun control statute. Dr. Emerson had been the subject of a Texas state trial court restraining order which forbade him from threatening his wife or children (domestic violence restraining order). *Emerson,* 270 F.3d at 211-12. Dr. Emerson was found in possession of a Beretta 9mm pistol and indicted by a federal grand jury pursuant to 18 U.S.C. § 922(g)(8). *Ibid.* Dr. Emerson moved to dismiss the indictment, asserting that the statute, facially and as applied to him, violated his individual, personal right to keep and bear arms as guaranteed by the Second Amendment. Although the court of appeals reached the conclusion that the Second Amendment is an individual right, it did so in dicta: "[B]ecause of our holding that section 922(g)(8), as applied to Emerson, does not infringe his individual rights under the Second Amendment we will not now further elaborate as to the exact scope of all Second Amendment rights." *Emerson*, 270 F.3d at 260.

Furthermore, both the Fifth and the Ninth Circuits have, despite their differing analytical approaches, refused to disturb reasonable gun-control measures. Despite its reasoning that the right to keep and bear arms is an individual right, the *Emerson* court agreed that even such a right is subject to legitimate public safety and police power considerations. It is well settled by this Court that regulation of firearms is a proper police function that does not violate Second Amendment axioms. *Lewis v. United States*, 445 U.S. 55, 65-66 (1980) (gun law prompted by Congress' concern for the easy availability of firearms and threat to community peace); *Robertson v. Baldwin*, 165 U.S. 275, 281-282 (1897) (the right to keep and bear arms "is not infringed by laws prohibiting the carrying of concealed weapons").

Accordingly, the purported conflict between the Ninth and the Fifth Circuits posed by *Emerson* is, in fact, illusory. As the Solicitor General pointed out in his brief in Opposition to the Petition for Certiorari in *Emerson*: "Petitioner identifies no case, and the government is aware of none, in which a court of appeals has found Section 922(g)(8) – or for that matter, any other federal statutory restriction on private gun possession – to be violative of the Second Amendment . . . But while the courts of appeals are in disagreement concerning the abstract question whether the [Second] Amendment protects an individual right to bear arms for reasons unrelated to militia service, no circuit conflict exists on the constitutionality of any firearms prohibition contained within 18 U.S.C. 922." Brief for the United States in Opposition, *Emerson v. United States*, No. 01-8780, pp. 19-20. Nor is their any circuit conflict on the constitutionality of a state-law regulation of assault weapon possession and sale.

This case involves state efforts to regulate assault weapons. In the absence of any circuit conflict over the rights of states to do so, prudence dictates that this Court stay its hand.

III. PETITIONERS SEEK AN ADVISORY OPINION FROM THE COURT, AND THE PRESENT CASE DOES NOT PRESENT ISSUES THAT ARE SUFFICIENTLY DEVELOPED FOR CONSIDERATION BY THE COURT. AND THOSE ISSUES, EVEN IF RESOLVED, WILL NOT PROVIDE A MEANINGFUL REMEDY FOR PETITIONERS.

Petitioners candidly admit in their petition for certiorari that they are only seeking an advisory opinion from

the Court and that the present case presents only an abstract question:

> The nature, extent, and constitutional deficiencies of any *specific* restrictions on the right to keep and bear arms in this case should first be argued in depth and determined at trial on remand after guidance from this Court, and full expert and lay testimony. This petition does not present specific questions on the details of those complex Second Amendment issues. It squarely raises only the core Second/Fourteenth Amendment right to keep and bear arms issues, as well as the important need for a heightened standard of review of any infringements on this express fundamental right.

Petition, p. 2 n. 3 (italics in original).

It is unclear from the petition and the complaint whether or not it is necessary to reach the constitutional questions, since petitioners have only vaguely referenced the weapons at issue and the firearms statutes being challenged. This Court has long recognized "[t]he salutary principle that the essential facts should be determined before passing upon grave constitutional questions." *Polk Co. v. Glover*, 305 U.S. 5, 10 (1938). "[B]efore . . . questions of constitutional law, both novel and of far-reaching importance, [are] passed upon by this Court, 'the facts essential to their decision should be definitely found by the lower courts upon adequate evidence.'" *Borden's Farm Prods. Co. v. Baldwin*, 293 U.S. 194, 212 (1934) (quoting *City of Hammond v. Schappi Bus Line, Inc.*, 275 U.S. 164, 171-172 (1927) (Brandeis, J.)).

In petitioners' first amended complaint, they state "Plaintiffs would like to exercise their rights to possess,

carry and conceal firearms, subject to *reasonable* restrictions, such as mandatory background checks and appropriate classes demonstrating proficiency in the safe use of firearms for protection and sport." See Resp. App., p. 10, ¶ 32 (emphasis in original). It is evident that petitioners concede that some public and peace-officer safety concerns are legitimate in the context of the Second Amendment. While petitioners evidently object to registration of firearms, they are, somewhat inconsistently, willing to submit to a background check – which uses a registry to determine one's eligibility to possess firearms. See Resp. App., p. 10, ¶ 32; p. 5, ¶ 9; p. 26, ¶¶ 125-26.

The scope of the questions any jury would be asked to determine is ambiguous, at best. Petitioners make vague reference that, "[a]s a direct and proximate result of the herein [unspecified] acts, omissions, and systematic deficiencies, policies and customs of all and/or part of Defendants, Plaintiffs have been harmed according to proof." See Resp. App., p. 14, ¶ 53. On the record as it currently stands, it would be a Herculean undertaking for a jury to determine "the harm" to petitioners, given the breadth and ambiguity of the allegations in the complaint.

Petitioners have never stated what, if any, assault weapons they own, nor have they explained why they could not register their weapons. They have not alleged that they attempted to obtain a permit to purchase, sell, or possess an assault weapon, and were rejected a permit for some reason which violates federal constitutional principles. Petitioners have not explained why they simply cannot remove the characteristics from their assault weapons, if indeed they possess the inappropriate firearms.

Furthermore, petitioners' complaint challenges broadly a wide variety of California's firearms control statutes. According to the petition and the complaint, at trial the jury would be expected to review each and every one of these statutes in light of this Court's advisory opinion. In addition to the previously discussed amendments to the Roberti-Roos assault weapons law, petitioners attack California's "Saturday Night Special" law, Resp. App., p. 6, ¶¶ 14-15; "Safe Handgun" law, *id.*, p. 16. ¶ 61; "large capacity magazine" law, *id.* p. 17, ¶ 68; and "Concealed Carry" law, *id.* pp. 24-26, ¶¶ 109-22. Petitioners also demand jury trial on issues that the aforementioned laws infringe their "Right to Privacy," Resp. App., pp. 26-27, ¶¶ 124-30; right to "Freedom of Association," *id.*, pp. 27-28, ¶¶ 131-36; "Due Process" rights, *id.* pp. 19-20, ¶¶ 82-89; "Liberty Interests," *id.* pp. 20-22, ¶¶ 90-100; "Equal Protection Rights," *id.* pp. 22-23, ¶¶ 101-07; and rights assertedly guaranteed by the "9th and 14th Amendments," *id.*, pp. 28-29, ¶¶ 137-43.

Finally, even if petitioners were to prevail before this Court, they will still not be free from regulation of their assault weapons. Petitioners will still be subject to virtually identical federal assault weapons restrictions under 18 U.S.C. §§ 921(a)(30), 922 Appendix, as enforced through 18 U.S.C. § 922(v)(1). Indeed, a far more effective challenge for the purpose of determining the parameters of any government's ability to limit petitioners' asserted individual Second Amendment rights would be a challenge to the *federal* assault weapons control laws.

This Court has emphasized that it "will not reach constitutional questions in advance of the necessity of deciding them." *Three Affiliated Tribes v. Wold Eng'g, P.C.*, 467 U.S. 138, 157 (1984); *Parker v. County of Los Angeles*,

338 U.S. 327, 333 (1949); *Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 346-348 (1936) (Brandeis, J., concurring). Such a premature circumstance is presented here.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Dated: October 20, 2003

Respectfully submitted,

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THE UNITED STATES DISTRICT COURT IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA

SEAN SILVERIA; JACK SAFFORD; PATRICK OVERSTREET; DAVID K. MEHL; SGT. STEVEN FOCHT; SGT. DAVID BLALOCK; MARCUS DAVIS; VANCE BOYCE; KEN DEWALD. Plaintiffs,	CASE NO.: CIV S 00411 WBS/JFM **FIRST AMENDED COMPLAINT FOR:** 1) 42 U.S.C. § 1983 (Second and Fourteenth Amendment – unconstitutional firearms statute)

vs.

BILL LOCKYER Attorney General, State of California; GRAY DAVIS, Governor, State of California.

Defendants.

2) 42 U.S.C. § 1983 (Fifth and Fourteenth Amendment-deprivation of property without due process)

3) 42 U.S.C. § 1983 (Fifth and Fourteenth Amendment-Liberty Interest)

4) 42 U.S.C. § 1983 (Fourteenth Amendment-Equal Protection – Assault Weapons owned by retired and off duty Law Enforcement officers)

5) 42 U.S.C. § 1983 (Fourteenth Amendment – Equal Protection – CCW)

6) 42 U.S.C. § 1983 (Fifth and Fourteenth Amendment – Right to Privacy – Gun Registration)

7) 42 U.S.C. § 1983 (First and Fourteenth Amendment – Freedom of Association)

8) 42 U.S.C. § 1983 (Ninth and Fourteenth Amendment – Right to Keep and Bear Arms – keeping and bearing arms is a natural right

) which pre-existed the
) rights enumerated in
) the Constitution)
)
) **DEMAND FOR JURY TRIAL**
) **[F.R.C.P. 38(b)]**
)
) REQUEST FOR
) PRELIMINARY
) INJUNCTION
)
) NOTICE OF
) UNCONSTITUTIONALITY
) OF STATE STATUTE
)

(Filed Jul. 24, 2000)

INTRODUCTION

1. "This year will go down in history. For the first time a civilized nation has full gun registration! Our streets will be safer, our police more efficient, and the world will follow our lead into the future." *Adolph Hitler*, 1935. These plans went into affect again in 2000 when the new California firearm registration law took affect.

2. "I ask, sir, what is the militia? It is the whole people . . . to disarm the people is the best and most effectual way to enslave them." *George Mason*, during Virginia's ratification convention (1788).

3. "No free man shall ever be debarred the use of arms." Thomas Jefferson.

4. This case challenges the Constitutionality of California's so called "Assault Weapons" law, and other nuisance firearms legislation.

5. "God grants liberty only to those who love it, and are always ready to guard and defend it." *Daniel Webster*, speech, June 3, 1834.

THE UNDERLYING FACTS

6. Since about half of U.S. households have a gun, broadly directed restrictions on the acquisition, possession, and use of guns impinge on the lives and liberties of millions of Americans and Californians, not just a small, politically powerless subset of them.

7. In response to this simple fact, the advocates of more restrictive controls have directed their focus away from measures which result in either an all out ban or regulation of all types of guns; as such, current gun laws are targeted toward those which regulate special subtypes of firearms, i.e. types of guns which are owned by smaller numbers of voters and which are consequently more vulnerable to regulation.

8. For instance, "if I could have gotten 51 votes in the Senate of the United States for an out-right ban, picking up every one of them . . . 'Mr. and Mrs. America, turn 'em all in,' I would have done it. I could not do that. The votes weren't here." Senator Dianne Feinstein: CBS-TV's "60 Minutes", February 5, 1995, "Semi-automatic assault weapons are turning America's streets into war zones. True, ***they are not responsible for a large number of homicides***, but what they do is offer the possibility. . ." [*emphasis added*] Senator Dianne Feinstein: Congressional Record, November 9, 1993. In fact, the actual number is statistically insignificant that DOJ and the FBI do not even maintain statistics on alleged assault weapons."

9. California's laws have thus increasingly stressed the need to control various special weapon categories such as "assault rifles" and "Saturday Night Special" ("Junk Guns") handguns, and "cop-killer" bullets, or sometimes all handguns. For each weapon or ammunition type, it is argued that the object is especially dangerous or particularly useful for criminal purposes, while having little or no counterbalancing utility for lawful purposes. A common slogan is "This type of gun is good for only one purpose – killing people."

10. The specific weapon type so described shifts from one year to the next, in response to shifts in the political winds rather than actual criminologically significant shifts in criminal use of guns. For example, the so-called "cop killer bullets" which were restricted in 1986, have never killed a cop.

11. "Assault rifles" and "assault weapons" became important objects of gun control efforts in the 1980s.

12. Contrary to widespread claims, these semi-automatic "military-style" weapons are rarely used by criminals in general or by drug dealers or juvenile gang members in particular, are almost never used to kill police officers, are generally *less lethal than ordinary hunting rifles*, and are not easily converted to fully automatic fire. They do offer a rate of fire somewhat higher than other gun types and can be used with magazines holding large numbers of cartridges, but there is **absolutely no evidence** demonstrating that so called "assault weapons" are relevant to the outcome of any significant number of gun crimes. *Guns and Violence: A Summary of the Field*, Gary Kleck, Ph.D., School of Criminology and Criminal Justice, Florida State University, Tallahassee, Florida.

13. In fact, fewer than 2% of gun homicides involve the military-style semiautomatic weapons which are commonly labeled "assault weapons." *Guns and Violence: A Summary of the Field*, Gary Kleck, Ph.D., School of Criminology and Criminal Justice, Florida State University, Tallahassee, Florida.

14. Saturday Night Specials (SNSs) or "Junk Guns" are small, cheap handguns. The U.S. Bureau of Alcohol, Tobacco and Firearms (BATF) definition of SNSs is a barrel length under three inches, .32 caliber or less, and price under $50 in mid-1970's dollars. *California changed this definition dramatically by defining a SNS as any handgun lacking a "manually operated safety."* Thus, California has redefined BATF's criteria of a SNS.

15. Considering the obvious target of California's SNS gun law (i.e. Glock's and Sig's), SNSs are not the real target of the policies, but rather that all handguns are. Given the obscure and technical definitions that are actually used in legislation and administrative regulations in California, it was easy to manipulate such a definition in a politically low-profile way such that most handguns fell within the SNS category.

16. Each year about 1,500-2,800 criminals are lawfully killed by gun-wielding American civilians in justifiable or excusable homicides, *far more than are killed by police officers*. There are 600,000-1 million defensive uses of guns each year, significantly more than the number of crimes committed with guns.

17. About a third of U.S. households keep a gun at least partially for defensive reasons; at any one time nearly a third of gun owners have a firearm in their home (usually a handgun) which is loaded; about a quarter of

retail businesses have a gun on the premises; and approximately 5% of U.S. adults (including celebrities, politicians, judges, and off-duty and retired law enforcement personnel) regularly carry a gun for self-defense.

18. According to the State of California, center for Health Statistics and department of Justice, in 1997, out of 3,849 firearm/explosives deaths [DHS fails to identify the actual number of deaths caused by the use of firearms versus explosives] in California, ***1,727 were suicides*** and 175 were accidental; thus, approximately half were inflicted by another person; however, out of this number, 93% of the deaths were caused by handguns, not so called "assault weapons." DOJ's own records reflect that between 1990 to 1998, 10% were coded justifiable home shootings, and 5% were justificable police shootings. Thus, a minimum of 15% of the homicides were justifiable, leaving only approximately **1,500 homicides**. In fact, this Homicide rate is in fact declining. See Plaintiff's Exhibit "A" attached.

19. This is a mere pittance when compared to the number of people killed in 1997 by auto accidents [**3,809** (Plaintiff's Exhibit "B" attached.)], or by ingesting too much alcohol all at once [**3,345** (Plaintiff's Exhibit "C" attached.)].

20. Firearm Mortality (All figures are for U.S.) – Annual Firearm Deaths from Homicide have ranged from approximately 12,000 in 1976 to a peak of approximately 17,000 in 1993. In 1998, they have reached an all time low of 10,900. Handguns are used in a majority of the homicides. In 1998, 2,160 were from all other guns, other than handguns.

21. Age-Adjusted Death Rate: 12.2 deaths per 100,000 population (1997) Death Rate for Males Ages 15-24; 38.9 deaths per 100,000 population (1997) **Death Rate for Black Males Ages 15-24: 119.9 deaths per 100,000 population** (1997) Firearm suicide deaths: 6.6 per 100,000 population (1997) Fire Homicide Deaths: 5.1 per 100,000 population (1997). Source: National Vital Statistics Reports, Vol. 47, No. 19.

22. In 1997, there were 3,319 alcohol induced deaths in California out of 19,576 Alcohol-induced deaths in the United States, not including motor vehicle fatalities. In 1997, there were 25,175 deaths in the United States from Chronic Liver Disease and Cirrhosis. [All statistical information compiled from CDC and DHS.]

23. State Health Director Kim Belshé announced that the majority of Californians – 82 percent – do not smoke. *Secondhand smoke is the third leading cause of preventable death* in this country, killing 53,000 nonsmokers in the U.S. each year. In the largest study ever conducted on the issue, Harvard Medical School found that a high exposure to secondhand smoke nearly doubles a woman's risk of having a heart attack.

24. Over **400,000 people die** each year from the physiological effects of **tobacco** alone. California being the most with **43,000 annually**. .

25. Even though firearms are responsible for a fraction of all deaths and is steadily declining, and alcohol and tobacco are the leading causes of death as they are responsible for over half of all deaths in the United States. See Plaintiffs' exhibit "D." Thus, the Defendants are enforcing gun laws that lack any *rationale basis*. It is apparent that if Defendants' were concerned about saving

lives, they would enforce legislation which would ban alcohol and tobacco products, thus eliminating half of all deaths. As such, it defies reason as to why guns are specifically targeted and declared a "public nuisance," especially in light of this County's history regarding the right to keep and bear arms in defense of self and liberty.

26. As such, this is a claim for retrospective and/or prospective relief, as well as monetary damages, if applicable.

JURISDICTION

27. Jurisdiction conferred on this court by 28 U.S.C. §§ 1331 and 1343 which provides for original jurisdiction of this court and all actions authorized by 42 U.S.C. § 1983. Supplemental Jurisdiction is founded upon 28 U.S.C. § 1367.

VENUE

28. The unlawful actions alleged herein have taken place within the jurisdiction of the United States District Court for the Eastern District of California. The illegal acts took place in Sacramento County, California. Venue is proper under 20 U.S.C. § 1391(b).

ATTORNEYS FEES

29. Plaintiffs are entitled to attorney's fees pursuant to 42 U.S.C. § 1988, and as private attorney generals.

PARTIES

30. At all relevant times mentioned herein, Plaintiffs JACK SAFFORD; SEAN SILVEIRA; PATRICK OVERSTREET; DAVID K. MEHL; STEVEN FOCHT; MARCUS DAVIS; VANCE BOYCE; and KEN DEWALD, (hereinafter "Plaintiffs" unless otherwise noted), are at all times herein mentioned, adult male United States citizens and residents of California.

31. Plaintiffs own, or would like to own, semi-automatic rifles and/or pistols subject to the terms of the statute which prohibits and/or restricts possession, use, transfer and/or sale of semi-automatic rifles and/or pistols.

32. Plaintiffs' would like to exercise their right to possess, carry and conceal firearms, subject to ***reasonable*** restrictions, such as mandatory background checks and appropriates classes demonstrating proficiency in the safe use of firearms for protection and sport.

33. Plaintiff JACK SAFFORD is a resident of Corning, California, husband and father, and owns substantial acreage/farm land. He owns his own insurance agency and is a model citizen. He is a graduate of California State University, Chico.

34. Plaintiff SEAN SILVEIRA is a resident of Marin County, California, husband and father of two, and owns real property in Marin. He is a civil engineer, model citizen, and a graduate of California State University, Chico.

35. Plaintiff PATRICK OVERSTREET is a resident of Marin County, California, husband, and owns real property in Marin. He is employed by the San Francisco

Police Department as a S.W.A.T. officer, and a graduate of California State University, San Diego.

36. Plaintiff DAVID K. MEHL is a resident of Sacramento, California, husband, and owns real property in Sacramento. He is a chemical engineer, graduate of the University of California, Davis, and a model citizen.

37. Plaintiff SGT. STEVEN FOCHT is a resident of Placer County, husband and father, and owns real property in Placer County. He was a Marine Corp sniper who performed military functions in Desert Storm, Rwanda, Ethiopia, Kenya, Thailand, in addition to Mogadishu, Somalia. He was honorably discharged, and currently a Sergeant in the California Army National Guard. He is a model citizen.

38. Plaintiff SGT. DAVID BLALOCK is a resident of Sacramento County and owns real property in Sacramento County. He was assigned to the 82nd Airborne Division who is a Purple Heart recipient from combat injuries (AK 47 round through his arm) occurring in the Noriega police operation (invasion of Panama) and currently a Sergeant in the California Army National Guard. He is a model citizen.

39. Plaintiff MARCUS DAVIS is a resident of Sacramento, California, husband and expecting father, and real property owner. He is mortgage broker, graduate of the University of California, Davis, and a model citizen.

40. Plaintiff VANCE BOYCE is a resident of Colusa, California, husband and father, and real property owner. He is a [graduate] of California State University, Fresno.

41. Plaintiff KEN DEWALD is a resident of Paradise, California, husband and father, and real property

owner. He was honorably discharged from the Air Force, and is currently employed as a California Correctional Officer and a model citizen.

42. Defendant GRAY DAVIS is the Governor of the State of California, and holds those powers specifically granted to him by virtue of his office and the State constitution.

43. Article V, Section 1, of the California Constitution describes the responsibilities of the Governor with the following words: "The supreme executive power of this State is vested in the Governor. The Governor shall see that the law is faithfully executed."

44. Defendant BILL LOCKYER was elected as California's 30th Attorney General in November of 1998 and began his term in January of 1999. The Attorney General is the Chief Law Officer of the State of California and is elected and charged by the State constitution with the responsibility to ensure that State laws are uniformly and adequately enforced.

45. Article V, Section 13, of the California Constitution describes the responsibilities of the Attorney General with the following words: "Subject to the powers and duties of the Governor, the Attorney General shall be the chief officer of the State. It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced. The Attorney General shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their representative offices, and may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their

respective jurisdictions as to the Attorney General may seem advisable. Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law of which the superior court shall have jurisdiction, and in such cases the Attorney General shall have all the powers of a district attorney. When required by the public interest or directed by the Governor, the Attorney General shall assist any district attorney in the discharge of the duties of that office."

46. The Attorney General represents the people of California before trial, appellate, and Supreme Courts of California and the United States in criminal and civil matters; serves as legal counsel to State officers, boards, commissions, and departments; and assists district attorneys in the administration of justice.

47. Section 11042 of the Government Code requires state agencies to employ only the Attorney General, with few exceptions, as legal counsel to centralize legal work done on behalf of the State. Section 11041 lists those agencies that can represent themselves.

48. It is the responsibility of the Attorney General to assist city, county, state, federal, and international criminal justice agencies to ensure the uniformity and adequacy of enforcement of California State laws.

49. To support California's local law enforcement community, the Attorney General coordinates State-wide law enforcement efforts, participates in criminal investigations, provides forensic science services, and provides identification and information services and telecommunication support.

50. At all relevant times mentioned herein, Defendants are public officials subject to the limitations as set forth in the United States Constitution and the laws of the United States of America, including, but not limited to, the Second, Fourth, Fifth and Fourteenth Amendments.

51. Defendants, and each of them, were policy makers and ratified and/or supplemented the conduct of the other named defendants, and were in a position of power to enforce the laws of the United States of America, and uphold the Constitution.

52. Defendants were, at all times herein mentioned, legally responsible for the acts of their employees, agents, and servants committed in the scope of their employment.

53. As a direct and proximate result of the herein acts, omissions, and systematic deficiencies, policies and customs of all and/or part of Defendants, Plaintiffs have been harmed according to proof.

BACKGROUND INFORMATION

54. As a result of the passage of Senate Bill (SB) 23 (Chapter 129, Statutes of 1999), effective January 1, 2000 any person who, within the state of California, possesses any of the firearms identified in 12276 and other firearms described 12276.1 all euphemistically described as "assault weapon," except as provided in Penal Code section 12276 et seq., (original Roberti-Roos Assault Weapons Control Act), is guilty of a criminal offense. The original Roberti-Roos Assault Weapons Control Act, which was partially unconstitutional, has been supplemented by SB 23 to define assault weapons by their physical characteristics and functionality, rather than just by make and model.

55. Assault Weapons as defined under the original Roberti-Roos Assault Weapons Control Act are not allowed registration under this legislation. The passage of SB 23 also prohibits, except as provided, the manufacture, import, sale, giving or lending of large capacity magazines (defined as any ammunition feeding device with the capacity to accept more than 10 rounds, but not to include .22 caliber tube ammunition feeding devices) effective January 1, 2000.

56. Enforcement relative to the illegal possession of assault weaons will go into effect January 1, 2001, following the one-year registration period. Persons who lawfully possessed assault weapons prior to January 1, 2000 are required to either 1) register them with the Department of Justice between January 1, 2000 and December 31, 2000, 2) render them permanently inoperable, 3) remove them from California, 4) relinquish them to a police or sheriff's department, or 5) sell them to a California licensed firearms dealer who possesses a valid assault weapon dealer permit.

57. However, these prohibitions do not apply to off-duty or retired California peace officers.

58. In addition, citizens who associate with certain Government officials, and off-duty or retired California peace officers are entitled to carry concealed weapons.

59. Article I, Section 8 of the California Constitution provides that "[a] citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens."

60. Though the Roberti-Roos Assault Weapon Control Act of 1989 was augmented with the current

legislation, these acts cumulatively infringe upon Plaintiffs' rights guaranteed by the Second Amendment, and rights retained by the People.

61. In addition, Penal Code Section 12125 et seq. prohibits the manufacture, sale, importation, use, possession, use and/or lending of any handgun failing to satisfy the enumerated requirements, including among other things, handguns lacking a "manually operated safety." This means that Sig Saur's, Glock's and other very expensive and well engineered handguns are now on the prohibited list.

62. In addition, magazines for both long arms and pistols exceeding ten rounds are now prohibited, in certain circumstances. However, the sale or purchase of these magazines is now currently prohibited by law as well.

63. "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed." Second Amendment of the United States Constitution.

64. "The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land." Article III, Section 1 of the California Constitution.

FIRST CAUSE OF ACTION
42 U.S.C. § 1983
(Second and Fourteenth Amendments)

65. Plaintiffs incorporate by reference paragraphs 1 through 64 as though the same were set forth herein at length.

66. Plaintiffs are now prohibited from arming themselves with standard firearms under California law.

67. California law criminalizes firearms with certain, arbitrary characteristics.

68. California law criminalizes certain firearm components, i.e. magazines with a capacity of more than 10 rounds.

69. California law requires registration of firearms.

70. Such registration is the equivalent of registering rights, such as speech.

71. Plaintiffs are prohibited from keeping and bearing arms, including concealed weapons.

72. The Second Amendment is part of the Bill of Rights of the United States Constitution, and is thereby directly applicable to all the states.

73. In addition thereto, the United States constitution, including the Bill of Rights, has been declared to be "the supreme law of the land." Art. III, Sect. Cal. Const.

74. The Second Amendment, by virtue of its incorporation into the State constitution and by virtue of the Fourteenth Amendment, prohibits government officials from enforcing laws which would interfere with an "**individual's**" right to "***keep and bear*** arms."

75. Defendants, acting under color of law, are engaging in conduct that infringes on Plaintiffs' rights guaranteed and protected by the Second Amendment.

76. Defendants' acts include, but are not limited to,

(a) enforcing numerous statutes which infringe upon Plaintiffs' rights which are guaranteed by the Second Amendment,

(b) requiring Plaintiffs to register firearms, and making noncompliance with registration a criminal act,

(c) regulating and controlling firearms and their accessories in a way which obviously infringes upon Plaintiffs' rights of acquisition, ownership, possession, and to keep and bear arms,

(d) depriving Plaintiffs of their individual rights to protect themselves, property and their country.

77. In addition, the California Constitution, Article I, Section 1 specifically provides that "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

78. But by virtue of the current firearms laws, Plaintiffs' ability to exercise those rights have been infringed.

79. In essence, the result of Defendants enforcement of California statutes, Plaintiffs are precluded from being able to exercise those inalienable rights, except in very limited circumstances.

80. As a direct and proximate result, if Defendants are not enjoined from enforcing the subject laws, Plaintiffs will be irreparably harmed according to proof, including, but not limited to the loss of use and enjoyment of constitutional rights.

81. As a direct and proximate result, Plaintiffs have been damaged according to proof, including, but not limited to the loss of use and enjoyment of constitutional rights.

SECOND CLAUSE OF ACTION
42 U.S.C. § 1983
(Plaintiffs)
(DUE PROCESS)

82. Plaintiffs incorporate by reference paragraphs 1 through 81 as though the same were set forth herein at length.

83. Plaintiffs (excluding Sgt. BLALOCK) own firearms (property) and/or magazines which were legal to buy and sell under prior law.

84. After the subject law was passed, Plaintiffs wanted to sell their firearms and magazines. However, they are now prohibited by law, and are likewise precluded from entering into such a transaction.

85. As such, Plaintiffs' property is now devalued since they are unable to obtain the highest value that their property would be worth in an open and free market. In essence, Plaintiffs' property has now been rendered worthless.

86. As a direct and proximate result, Plaintiffs are being deprived their constitutional rights under color of law.

87. As a direct and proximate result, Plaintiffs have been damaged according to proof, including, but not

limited to the loss of use and enjoyment of constitutional rights and property.

88. As a direct and proximate result, Plaintiffs are being deprived their constitutional rights under color of law.

89. As a direct and proximate result, Plaintiffs have been damaged according to proof, including, but not limited to the loss of use and enjoyment of constitutional rights.

THIRD CAUSE OF ACTION
42 U.S.C. § 1983
(Plaintiffs)
(DUE PROCESS – Liberty Interest)

90. Plaintiffs incorporate by reference paragraphs 1 through 90 as though the same were set forth herein at length.

91. Firearm possession is a valuable liberty interest imbedded in both the Second Amendment and Fourteenth Amendment to the United States Constitution. "[T]here is a long tradition of widespread lawful gun ownership by private individuals in this country." *Staples v. United States*, 511 U.S. 600, 610 (1994). Thus, Plaintiffs have a protected liberty interest in firearm possession under the Fifth Amendment.

92. "It is wrong to convict a person of a crime if he had no reason to believe that the act for which he was convicted was a crime, or even that it was wrongful. This is one of the bedrock principles of American law. It lies at the heart of any civilized system of law." *United States v. Wilson*, 159 F.3d 280, 293 (7th Cir.1998) (Posner, C.J.,

dissenting). It offends both substantive and procedural due process for Plaintiffs to be subjected to criminal prosecution for laws criminalizing past behavior. Because current gun laws retroactively apply and are obscure criminal provisions, it is unfair to hold Plaintiffs accountable for their otherwise previous lawful actions.

93. The conduct these statutes criminalize is malum prohibitum, not malum in se. In other words, there was nothing inherently evil about Plaintiffs possessing certain firearms and accessories. Plaintiffs conduct is and will become unlawful merely because the statutes mandated that it be. See *Wilson* 159 F.3d at 294 (Posner, C.J., dissenting).

94. The subject gun laws are also one of those "highly technical statutes that present . . . the danger of ensnaring individuals engaged in apparently innocent conduct." of which the Supreme Court spoke in *Bryan v. United States*, 524 U.S. 184, 118 S.Ct. 1939, 1946-47, 141 L.Ed.2d 197 (1998).

95. In this case, numerous individuals in California will become criminals for lawful activities committed in the past since the state does not notify each individual firearm owner of the supposed duty to register guns and parts. See *Lambert v. California*, 355 U.S. 225 (1957).

96. Because current gun laws are obscure, highly technical statutes with no mens rea requirement, it violates Plaintiffs' Fifth Amendment due process rights to be subject to prosecution without proof of knowledge that they were violating the statutes.

97. As a direct and proximate result, Plaintiffs are being deprived their constitutional rights under color of law.

98. As a direct and proximate result, Plaintiffs have been damaged according to proof, including, but not limited to the loss of use and enjoyment of constitutional rights and property.

99. As a direct and proximate result, Plaintiffs are being deprived their constitutional rights under color of law.

100. As a direct and proximate result, Plaintiffs have been damaged according to proof, including, but not limited to the loss of use and enjoyment of constitutional rights.

FOURTH CAUSE OF ACTION
42 U.S.C. § 1983
(Equal Protection – Assault Weapons owned by off-duty and retired Law Enforcement officers)

101. Plaintiffs incorporate by reference paragraphs 1 through 100 as though the same were set forth herein at length.

102. The current so called "Assault Weapons" ban does not apply to off-duty and retired California Peace Officers. In other words, this class of citizens are granted privileges and immunities which are not granted to others.

103. This exemption was implemented to facilitate and enlist law enforcement officers to back the current gun legislation. It is a well known fact that *off-duty and retired* law enforcement officers, as a group, are the one of

the biggest purchasers of Assault Weapons, Rifles, and Semi-Automatic pistols, and that these purchases are unrelated to any law enforcement function they may undertake or have undertaken.

104. This exemption serves no legitimate law enforcement interest. For instance, why does an off-duty or retired officer need an AK-47 as no law enforcement agency in California uses them?

105. Plaintiffs are entitled to equal rights, protections and privileges under the law. However, a class of citizens are given rights simply because they happen to be associated with law enforcement.

106. Article I, Section 8 of the California Constitution provides that "[a] citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens." In this case, off-duty and retired California Peace Officers are " . . . granted privileges or immunities not granted on the same terms to all citizens."

107. As a direct and proximate result, Plaintiffs have been damaged according to proof, including, but not limited to the loss of use and enjoyment of constitutional rights.

FIFTH CAUSE OF ACTION
42 U.S.C. § 1983
(Plaintiffs, except Overstreet)
(Equal Protection – CCW)

108. Plaintiffs incorporate by reference paragraphs 1 through 106 as though the same were set forth herein at length.

109. For any citizen of "good moral character" and who has necessary firearms training, is still not entitled to obtain a concealed weapons permit, nor are they permitted to carry a loaded firearm within an incorporated area.

110. Instead, they must first apply to the local sheriff or police chief for a permit.

111. These permits are issued only to individuals with are politically affiliated with the issuing authority, made campaign contributions, or are socially related. In other words, they are used as a powerful tool to be exploited as rewards for those in power.

112. Sheriffs' and State Law Enforcement officials are currently issuing concealed weapons permits on a discriminatory basis. That is they are issued to campaign contributors and political supporters of the issuing authority.

113. In addition, police officers and retired police officers, including federal officers, obtain their concealed weapons authorization under a separate statute, which does not demand a showing of good cause. See Cal. Penal Code S 12031(b).

114. In other words, 12031(b) grants to *"active or honorably retired"* law enforcement officers preferential access to concealed weapons permits due to their *current or former* affiliation to the law enforcement community.

115. Though the stated reason is to protect California Peace Officers from possible harm due to their high involvement in crime, other professions carry the same or higher risk, military personnel subject to terrorist attacks

and protests, doctors employed at abortion clinics, attorney's dealing with disgruntled litigants and inmates, and so forth.

116. There is no rationale basis for this statute as a young black male in California under the age of 25 has a exceedingly far greater chance of being murdered than all peace officers combined throughout the entire United States.

117. Non-law enforcement citizens of good moral character and who adequate training and experience in the use of firearms (i.e. hunters, military, etc.) are not granted the same privilege. Therefore, the law has no rationale purpose other than not to disrupt law endorsements support of the current firearms laws.

118. If defendants enforced the same gun laws against law enforcement officers, the current gun laws would never have been passed as they would have been opposed by law enforcement.

119. Currently, any California resident can purchase a so-called "assault weapon" or carry a concealed weapon simply by becoming a member of a law enforcement agency.

120. Plaintiffs are entitled to equal rights, protections and privileges under the law. However, peace officers are given rights simply because they happen to be associated with law enforcement. Enforcement of such laws violates Plaintiffs' equal protection and association rights.

121. Article I, Section 8 of the California Constitution provides that "[a] citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens."

122. As a direct and proximate result, Plaintiffs have been damaged according to proof, including, but not limited to the loss of use and enjoyment of constitutional rights.

SIXTH CAUSE OF ACTION
42 U.S.C. § 1983
(All Plaintiffs)
(Privacy)

123. Plaintiffs incorporate by reference paragraphs 1 through 121 as though the same were set forth herein at length.

124. Under both the State and United States Constitution, Plaintiffs have the right to privacy as to the type of property they own, i.e. firearms.

125. Government Code Section § 6250 *et seq.* provides that members of the public may access information contained withing the Department of Justice, inclusive of gun registration information. Government Code Section 6254(f) only excludes certain records regarding ongoing criminal investigations and witness information. Otherwise, any member of the public may access the name, address and the type of property owned by Plaintiffs if they were to register their firearms as required by the statute.

126. In addition, the Gun registration laws allow government to spy on its citizens who are involved in legal activities, i.e. owning personal property, without any legitimate law enforcement interest at stake.

127. Furthermore, Plaintiffs' have a right to privacy in the protection of their homes and property.

128. The current gun laws will deprive Plaintiffs' of their lawful right to defend their persons in the sanctity of their own homes against intrusion by unlawful conduct undertaken by any person, including government officials. [History has shown over and over what can happen to a person in their own home when they are unarmed – see Plaintiffs' Exhibit "E" as just one example as to how a single intruder *with a knife* killed a father and three children, and severely injuring his wife as she ran from her own home because she could not defend herself against the stronger intruder.]

129. Why should government or the public be allowed to know what firearms Plaintiffs own, it to dictate what type of firearm Plaintiffs are allowed to use in defense of their person and home?

130. As a direct and proximate result, Plaintiffs have been damaged according to proof, including, but not limited to the loss of use and enjoyment of constitutional rights.

SEVENTH CAUSE OF ACTION
42 U.S.C. § 1983
(Freedom of Association)

131. Plaintiffs incorporate by reference paragraphs 1 through 130 as though the same were set forth herein at length.

132. The current gun laws permits the head of a law enforcement agency to dictate as to which Peace Officer may keep an "Assault Weapon" during their employment, or after they retire or quit.

133. If citizens (Plaintiffs) of California refuse to become part of an association known as "peace officer" or "agent of the Government," or to support a particular "politician," "Sheriff" or "Chief," then they are not granted the rights, privileges, immunities, and equal protections afforded to those who wish to associate with Government or elected officials.

134. Or, if citizens (Plaintiffs) of California refuse to become politically active in support of particular law enforcement officials, they are denied the firearm privileges bestowed upon those who care to associate with such political/governmental figures.

135. In other words, since Plaintiffs refuse to associate with law enforcement or those politically associated with law enforcement, they are denied equal protection of the laws, and privileges and immunities.

136. As a direct and proximate result, Plaintiffs have been damaged according to proof, including, but not limited to the loss of use and enjoyment of constitutional rights.

EIGHTH CAUSE OF ACTION
42 U.S.C. § 1983
(Plaintiffs)
(9th and 14th Amendments)

137. Plaintiffs incorporate by reference paragraphs 1 through 137 as though the same were set forth herein at length.

138. Though, *as held by the Ninth Circuit*, the right to keep and bear arms is a state right, the Ninth Amendment of the U.S. Constitution specifically provides that the

rights of the people, though not expressly enumerated, are nevertheless entitled to protection.

139. The Ninth Amendment is directly applicable to Plaintiffs since "The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land." Article III, Section 1 of the California Constitution.

140. In this case, this country has a long and established history of "the people" keeping and bearing military arms; keeping and bearing arms is a natural right which pre-existed the rights enumerated in the constitution.

141. The right to keep and bear arms is a natural right that every law abiding citizen posses, this right can never be restricted or taken away by Government.

142. Defendants have infringed upon Plaintiffs' natural right to possess, bear and keep firearms. As a direct and proximate result, Plaintiffs have been damaged according to proof, including, but not limited to the loss of use and enjoyment of constitutional rights.

143. "God grants liberty only to those who love it, and are always ready to guard and defend it." *Daniel Webster*, speech, June 3, 1834.

WHEREFORE, Plaintiffs demand judgment against the Defendants, jointly and severally, including but not limited to:

1. For general damages in a sum to be determined.
2. For special damages in a sum to be determined.
3. For attorney fees and costs.

4. For issuance of a preliminary and permanent injunction, including, but not limited to, prohibiting further enforcement of any act or law in violation of Plaintiffs' constitutional rights.

DATED: July 24, 2000

Respectfully submitted,
LAW OFFICES OF
GARY W. GORSKI

/s/ Gary W. Gorski
GARY W. GORSKI,
Attorney for Plaintiffs

PLAINTIFF'S EXHIBIT A

Center for Health Statistics
Death Records

DEATHS BY AGE OF DECEDENT
AGE OF DECEDENT: ALL
RACE/ETHNICITY[1]: ALL
GENDER: ALL
CAUSES OF DEATH: INJURY BY FIREARMS E922, E955.0-955.4, E965.0-965.4, E970, E985.0-985.4
PLACE OF OCCURRENCE: CALIFORNIA
YEAR OF EVENT: 1997

AGE OF DECEDENT	NUMBER OF DEATHS	PERCENT[2]
<1	2	0.1%
1-4	15	0.4%
5-14	55	1.4%
15-24	1,124	29.2%
25-34	871	22.6%
35-44	616	16.0%
45-54	416	10.8%
55-64	242	6.3%
65-74	235	6.1%
75-84	189	4.9%
85+	76	2.0%
unknown	8	0.2%
TOTAL	3,849	100.0%

[1] *White, Black and Other exclude Hispanic ethnicity. Hispanic includes any race category. Other includes Asian, Pacific Islander and American Indian. Other non-Asian, not stated, and unknown are included in White race category.*

[2] *Percents are rounded independently and may not add to total.*

Source: Department of Health Services, Death Records.

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Center for Health Statistics
Death Records

DEATHS BY AGE OF DECEDENT
AGE OF DECEDENT: ALL
RACE/ETHNICITY[1]: ALL
GENDER: ALL
CAUSES OF DEATH: SUICIDE – FIREARMS/EXPLOSIVES E955
PLACE OF OCCURRENCE: CALIFORNIA
YEAR OF EVENT: 1997

AGE OF DECEDENT	NUMBER OF DEATHS	PERCENT[2]
5-14	6	0.3%
15-24	227	13.1%
25-34	273	15.8%
35-44	302	17.5%
45-54	275	15.9%
55-64	186	10.8%
65-74	209	12.1%
75-84	175	10.1%
85+	72	4.2%
unknown	2	0.1%
TOTAL	1,727	100.0%

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[1] *White, Black and Other exclude Hispanic ethnicity. Hispanic includes any race category. Other includes Asian, Pacific Islander and American Indian. Other non-Asian, not stated, and unknown are included in White race category.*

[2] *Percents are rounded independently and may not add to total.*

Source: Department of Health Services, Death Records.

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Center for Health Statistics
Death Records

DEATHS BY AGE OF DECEDENT
AGE OF DECEDENT: ALL
RACE/ETHNICITY[1]: ALL
GENDER: ALL
CAUSES OF DEATH: HOMICIDE – FIREARMS/EXPLOSIVES E965
PLACE OF OCCURRENCE: CALIFORNIA
YEAR OF EVENT: 1997

AGE OF DECEDENT	NUMBER OF DEATHS	PERCENT[2]
<1	2	0.1%
1-4	14	0.7%
5-14	43	2.2%
15-24	844	43.1%
25-34	554	28.3%
35-44	290	14.8%
45-54	127	6.5%
55-64	48	2.5%
65-74	19	1.0%
75-84	8	0.4%
85+	3	0.2%
unknown	4	0.2%
TOTAL	1,956	100.0%

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[1] *White, Black and Other exclude Hispanic ethnicity. Hispanic includes any race category. Other includes Asian, Pacific Islander and American Indian. Other non-Asian, not stated, and unknown are included in White race category.*

[2] *Percents are rounded independently and may not add to total.*

Source: Department of Health Services, Death Records.

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[LOGO]

Highlights from the "Advance Report: California Vital Statistics, 1998"

- California and United States Comparisons
- California's Births
- California's Deaths
- California's Infant Deaths
- How to Order the "Advance Report: California Vital Statistics, 1998"
- Go to Last Year's Highlights

California and United States Comparisons

For the year 1998:

California's estimated population* was 33,494,000, an increase of 1.6 percent (537,000 persons) over the state's 1997 population. California's population comprises 12.4 percent of the United States population, or roughly one of every eight residents.

California's 521,265 live births represented 13.2 percent of the preliminary count of all live births in the U.S., or roughly one of every eight births. California's birth rate (15.6) continued to exceed the preliminary U.S. birth rate (14.6).

California's 225,450 deaths comprised 9.6 percent of all the preliminary deaths in the U.S., or roughly one of every ten deaths. California's death rate (6.7) continued to fall below the preliminary U.S. death rate (8.7).

California's infant death rate of 5.7 per 1,000 live births was lower than the preliminary rate for the United States (7.2).

California's Births

The number of live births to California residents decreased for the eighth consecutive year, dropping from 524,174 in 1997 to 521,265 in 1998 (-0.6 percent).

California's birth rate in 1998 was 15.6 births per 1,000 population, a decrease of 1.9 percent from the 1997 birth rate of 15.9.

California's birth rate decreased in 1998 compared to 1997 for mothers ages under 15-24 and increased for mothers ages 25-44.

In 1998, Hispanics had the largest number (247,796) and highest percentage (47.5 percent) of births among California's race/ethnic groups.

California's Deaths

The number of deaths to California residents increased 0.9 percent from 223,438 in 1997 to 225,450 in 1998.

California's death rate in 1998 (6.7 deaths per 1,000 population) decreased by 1.5 percent from the 1997 rate.

The three most prevalent causes of death were heart disease, malignant neoplasms, and cerebrovascular disease, which together accounted for 60.6 percent of all deaths in California in 1998.

Death rates decreased in 1998 for seven of the ten leading causes of death and increased for three. The largest percentage decrease in the death rate was in homicides, which decreased by 19.0 percent. The largest percentage increase was in pneumonia and influenza (6.7 percent).

In 1998, California's death rates were lower for females than for males in all age groups. Death rates for California's females decreased between 1997 and 1998 in all age groups with the exception of the age group 5-14. For California's males, death rates went down in all age groups.

California's Infant Deaths

There were 2,994 California infants under the age of one year who died in 1998, a decrease of 97 infant deaths (-3.1 percent) from 1997.

California's 1998 infant death rate was the lowest ever recorded, 5.7 infant deaths per 1,000 live births. This was a decrease of 3.4 percent from 1997.

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*Population Estimates for California Counties, Report 98E-2, January 1999.

How to order the "Advance Report California Vital Statistics, 1998"

To order a copy of the full report, "Advance Report, California Vital Statistics, 1998," contact the Vital Statistics Section at (916) 445-6355 or send your payment with your request of the publication by writing to:

Department of Health Services
Office of Health Information and Research
304 S Street, 3rd Floor
Sacramento, California 95814
The cost of this report is $10.00.

Return to Vital Statistics Data Tables Home Page

PLAINTIFF'S EXHIBIT B

Center for Health Statistics
Death Records

DEATHS BY AGE OF DECEDENT
AGE OF DECEDENT: ALL
RACE/ETHNICITY[1]: ALL
GENDER: ALL
CAUSES OF DEATH: MOTOR VEHICLE ACCIDENTS E810-825
PLACE OF OCCURRENCE: CALIFORNIA
YEAR OF EVENT: 1997

AGE OF DECEDENT	NUMBER OF DEATHS	PERCENT[2]
<1	13	0.3%
1-4	89	2.3%
5-14	168	4.4%
15-24	822	21.6%
25-34	649	17.0%
35-44	570	15.0%
45-54	457	12.0%
55-64	306	8.0%
65-74	305	8.0%
75-84	309	8.1%
85+	116	3.0%
unknown	5	0.1%
TOTAL	3,809	100.0%

[1] *White, Black and Other exclude Hispanic ethnicity. Hispanic includes any race category. Other includes Asian, Pacific Islander and American Indian. Other non-Asian, not stated, and unknown are included in White race category.*

[2] *Percents are rounded independently and may not add to total.*

Source: Department of Health Services, Death Records.

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PLAINTIFF'S EXHIBIT C

Center for Health Statistics
Death Records

DEATHS BY AGE OF DECEDENT
AGE OF DECEDENT: ALL
RACE/ETHNICITY[1]: ALL
GENDER: ALL
CAUSES OF DEATH: ALCOHOL – INDUCED DEATHS
291, 303, 305.0, 357.5, 425.5, 535.3,
571.0-571.3, 790.3, E860.0-E860.1
PLACE OF OCCURRENCE: CALIFORNIA
YEAR OF EVENT: 1997

AGE OF DECEDENT	NUMBER OF DEATHS	PERCENT[2]
15-24	14	0.4%
25-34	129	3.9%
35-44	657	19.6%
45-54	946	28.3%
55-64	749	22.4%
65-74	579	17.3%
75-84	232	6.9%
85+	37	1.1%
unknown	2	0.1%
TOTAL	3,345	100.0%

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[1] *White, Black and Other exclude Hispanic ethnicity. Hispanic includes any race category. Other includes Asian, Pacific Islander and American Indian. Other non-Asian, not stated, and unknown are included in White race category.*

[2] *Percents are rounded independently and may not add to total.*

Source: Department of Health Services, Death Records.

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PLAINTIFF'S EXHIBIT D

OVERVIEW

Tobacco use remains the leading preventable cause of death in the United States, causing more than 400,000 deaths each year and resulting in an annual cost of more than $50 billion in direct medical costs.

Each year, smoking kills more people than AIDS, alcohol, drug abuse, car crashes, murders, suicides, and fires---combined!

Nationally, smoking results in more than 5 million years of potential life lost each year.

Approximately 80% of adult smokers started smoking before the age of 18. Every day, nearly 3,000 young people under the age of 18 become regular smokers.

More than 5 million children living today will die prematurely because of a decision they will make as adolescents ---the decision to smoke cigarettes.

Strategic Vision

Targeting Tobacco Use: The Nation's Leading Cause of Death, At-A-Glance

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Healthy People 2010 Objectives

Healthy People 2000 Objectives

1995 National Household Survey on Drug Abuse, Tobacco Related Statistics, SAMHSA, August 1996

Tobacco Use in the United States---Overview

Impact of Tobacco Use Since the 1964 Surgeon General's Report

Significant Developments Related to Smoking and Health 1964-1996

Selected Actions of the U.S. Government Regarding the Regulation of Tobacco Sales, Marketing, and Use.

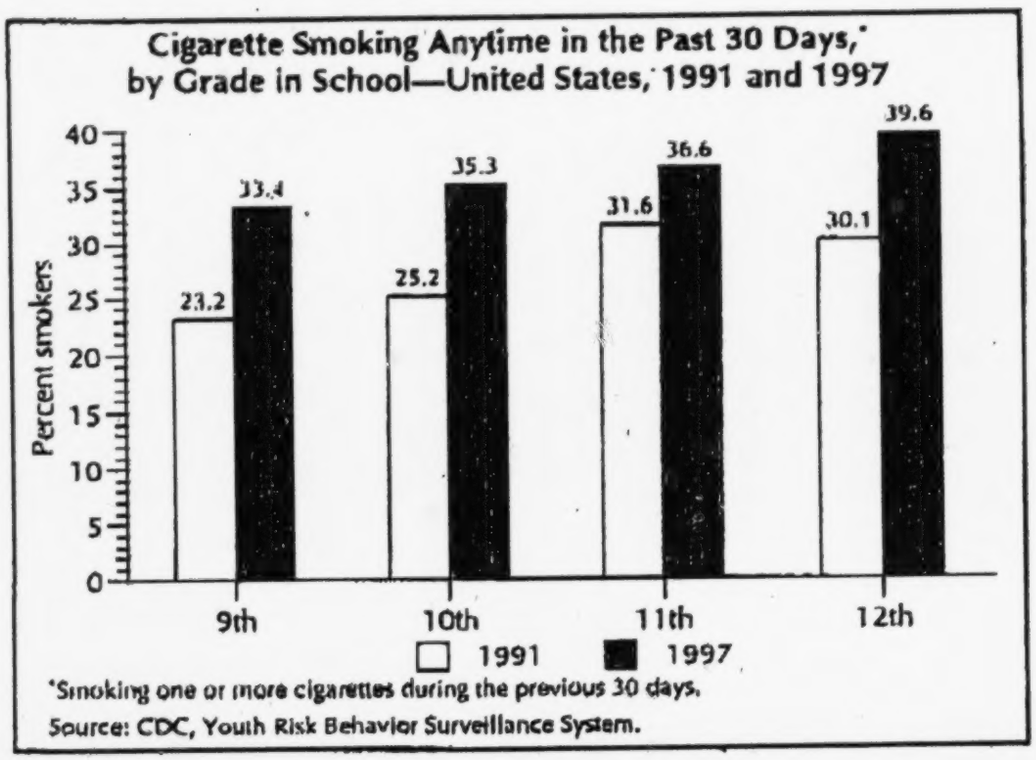
⬅ **TIPS Home Page**

TIPS Tobacco Information and Prevention Source

This document is available in Portable Document Format (PDF-971K) and PostScript Format (PS-2Mb)

Targeting Tobacco Use:
The Nation's Leading Cause of Death

AT-A-GLANCE
2000



"Today, nearly 3,000 young people across our country will begin smoking regularly. Of these 3,000 young people, 1,000 will lose that gamble to the diseases caused by smoking. The net effect of this is that among children living in America today, 5 million will die an early, preventable death because of a decision made as a child."

Donna E. Shalala, PhD
Secretary, U.S. Department of Health and Human Services

Tobacco Use in the United States

BEST AVAILABLE COPY

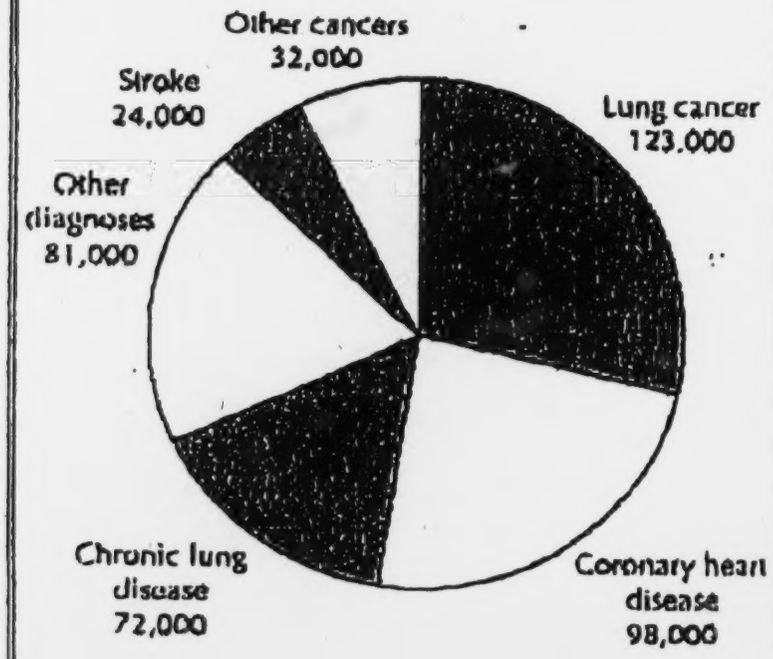
Smoking-related illnesses cost the nation more than $100 billion each year.

An estimated 48 million adults in the United states smoke cigarettes, even though this single behavior will result in death or disability for half of all regular users. Tobacco use is responsible for more than 430,000 deaths each year, or 1 in every 5 deaths. Paralleling this enormous health toll is the economic burden of tobacco use: more than $50 billion in medical expenditures and another $50 billion in indirect costs.

Since the release in 1964 of the first Surgeon General's report on smoking and health, the scientific knowledge about the health consequences of tobacco use has greatly increased. It is now well documented that smoking can cause chronic lung disease, coronary heart disease, and stroke, as well as cancer of the lungs, larynx, esophagus, mouth, and bladder. In addition, smoking is known to contribute to cancer of the cervix, pancreas, and kidneys. Researches have identified more than 40 chemicals in tobacco smoke that cause cancer in humans and animals. Smokeless tobacco and cigars also have deadly consequences, including lung, larynx, esophageal, and oral cancer.

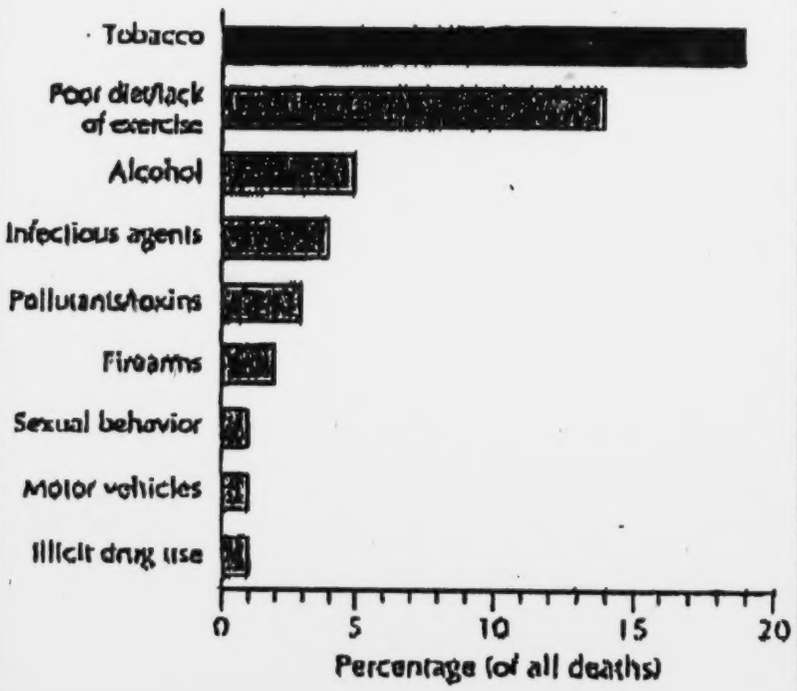
The harmful effects of smoking do not end with the smoker. Women who use tobacco during pregnancy are more likely to have adverse birth outcomes, including babies with low birth weight, which is linked with an increased risk of infant death and with a variety of infant health disorders. The health of nonsmokers is adversely affected by environmental tobacco smoke (ETS). Each year, exposure to ETS causes an estimated 3,000 nonsmoking Americans to die of lung cancer and causes up to 300,000 children to suffer from lower respiratory tract infections. Evidence also indicates that exposure to ETS increases the risk of coronary heart disease.

430,000 U.S. Deaths Attributable Each Year to Cigarette Smoking *



*Average annual number of deaths, 1990-1994.
Source: CDC, *MMWR* 1997;46:448-51

Actual Causes of Death, United States, 1990 *



*The percentages used in this figure are composite approximations derived from published scientific studies that attributed deaths to these causes.
Source: McGinnis JM, Foege WH. Actual causes of death in the United States. *JAMA* 1993;270:2207-12.

California Department of Health Services

Ten Leading Causes of Death
California, 1997 and 1998
By Place of Residence

Cause of Death	ICD Code Ninth Revision	1997		1998	
		Number	Rate	Number	Rate
All Causes	001-999	223,438	678.0	225,450	672.9
Diseases of the Heart	390-398,402,404-429	68,273	207.2	68,946	205.8
Malignant Neoplasms	140-208	51,818	157.2	51,186	152.8
Cerebrovascular Disease	430-438	16,649	50.5	16,385	48.9
Pneumonia and Influenza	480-487	12,286	37.3	13,316	39.7
COPD and Allied Conditions	490-496	11,737	35.6	12,261	36.6
Unintentional Injuries	E800-949	8,762	26.6	8,620	25.7
Diabetes	250	5,611	17.0	5,796	17.3
Cirrhosis	571	3,502	10.6	3,460	10.3
Suicide	E950-959	3,424	10.4	3,215	9.6
Homicide	E960-969	2,780	8.4	2,265	6.8
AIDS	042-044	1,857	5.6	1,432	4.3
All Other Causes	Residual	36,739	NA	38,568	N/A
Source:	State of California, Department of Finance: 1997 and 1998 Population: Population Estimates for California State and Counties, Report 98 E-2, July 1, 1990 through July 1, 1998, January 1999. State of California, Department of Health Services; Death Records.				
Note:	Rates are per 100,000 population. Rates are rounded independently and may not add to totals.				

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PLAINTIFF'S EXHIBIT E

[Picture Omitted In Printing]

Family knifed while sleeping

Father, two sons, daughter slain in rampage; mom survives

By Joe Mathews and Manuel Gamiz
Los Angeles Times

PICO RIVERA – Moving from bedroom to bedroom, an attacker slashed and stabbed five members of a much-admired Pico Rivera family early Friday, killing a father, his two sons and a daughter and wounding the family's mother as they slept, authorities said.

The floors of the neatly kept yellow house were streaked in blood when Los Angeles County sheriff's deputies arrived. Five of the eight members of the Flores family had been attacked.

Richard Flores, 42, an affable bear of a man, was found dead in the hallway, apparently after struggling with his killer. His wife, Silvia, 39, who survived the stabbing, told investigators she awakened to see a man stabbing her and her husband but did not recognize the attacker.

Authorities say it is unclear whether the man was a stranger to Flores or someone she knew but couldn't identify in the darkness: Flores, who taught religion classes at her parish, was taken to the hospital where she remained in stable condition with wounds to her upper torso. She described her assailant as a cleanshaven man in his 20s.

"We've got a lot of interviewing to do and hopefully that will lead to something," said county sheriff's homicide bureau Lt. Marilyn Baker.

But she acknowledged, as other [illegible] relatives did, that stabbings typically are evidence that the attackers know their victims. Baker said, however, she was unsure whether that applies in this case.

The Floreses' two sons, Richard, 17, and Matthew, 10, were found dead in the bedroom they shared. In another room, the Floreses' 13-year-old daughter, also named Silvia, had been killed.

The family members who escaped injury were sleeping in another bedroom.

In a neighborhood more accustomed to backyard barbecues and pickup basketball games, neighbors and sheriff's deputies conversed with Flores' family members shrieking in agony, "My dad's dead!" and "My brother's dead!"

As the news of the crime spread – stunning friends, school classmates and neighbors – a profile emerged of the Flores family: close-knit, genial- and -athletic. They lived in a community so secure that many people kept their doors unlocked. Authorities said the Floreses' home might have been unlocked Thursday night.

Flores coached youth football, baseball and basketball. Three of his children played competitive sports.

"I don't think you could play organized sports in Pico Rivera and not run into a Flores," said Frank Blanco, 45, a member of the Rivera Baseball Association and Pop Warner football league along with [Illegible].

* * *